



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,212	07/18/2003	Rickey D. Hart	022956-0233	2862
21125	7590	04/21/2006	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			PREBILIC, PAUL B	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/623,212

Applicant(s)

HART, RICKEY D.

Examiner

Paul B. Prebilic

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 61-65, 67-69, 71-89 and 95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 84-89 and 95 is/are allowed.
- 6) ☒ Claim(s) 61-65, 67-69, 71 and 75-83 is/are rejected.
- 7) ☒ Claim(s) 66 and 72-74 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/23/06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Objections***

Claim 72-74 are objected to because of the following informalities:

On line 8 of claim 72, the language "proximal a end" is now grammatically awkward because the "a" was inserted in an improper place. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 61, 62, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna (US 5,151,104) in view of Draenert (US 5,084,050) or Nicholson et al (US 5,725,529). Kenna meets the claimed method where the stabilizing element as claimed is the first portion (30) of Kenna and the soft tissue as claimed is the ligament (22) or tendon (64) of Kenna; see Figures 1 to 9, column 5, lines 7-26 and column 3, line 22 to column 4, line 68.

However, Kenna fails to disclose the pressure fit or compression fit within the bone opening as claimed. However, both Draenert (see columns 1 to 3) and Nicholson (see the abstract and figures) teaches that it was known to design similar devices in the art such that a pressure fit or compression fit it formed with the surrounding bone. Therefore, it is the Examiner's position that it would have been obvious to use a

pressure fit or compression fit feature in addition to the feature to join the Kenna device to bone in order to provide a more secure attachment to the same.

Claims 69, 75-80, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna (US 5,151,104), Draenert (US 5,084,050), and Nicholson et al (US 5,725,529), as applied to claims 61, 62, 67, and 70 above, in further view of Li (US 5,707,395). Kenna fails to disclose the step of looping the graft through the aperture as claimed. However, Li teaches that it was known to loop grafts through holes in similar implants within the art; see Figure 1 and column 6, lines 36-42. Therefore, it is the Examiner's position that it would have been obvious to loop graft (22) or (64) of Kenna through the opening for its attachment in order to use a double thickness, and thus, a stronger graft, in the place of the single graft used by Kenna.

Claims 63-65, 68, 71, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna (US 5,151,104), Draenert (US 5,084,050), and Nicholson et al (US 5,725,529), as applied to claims 61, 62, 67, and 70 above, in further view of Kenna (US 4,828,896) or Treace (US 3,953,896). Kenna ('104) fails to disclose the use of a flange therein that is placed outside the hole as claimed. However, both Kenna ('896) and Treace teach that it was known to use flanges on similar anchors that are outside at least one hole to anchor similar grafts; see Figure 3 of Treace and see Figures 3 and 8 of Kenna ('896). Therefore, it is the Examiner's position that it would have been obvious to put a flange on the Kenna ('104) anchors as additional means to secure them to the bone.

Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenna ('104), Draenert, Nicholson, and Li as applied to claims 69, 75-80, and 82 above, and further in view of Kenna ('104) or Treace (US 3,953,896). Kenna ('104), as modified by Draenert or Nicholson, and Li fails to disclose the use of a flange therein that is placed outside the hole as claimed. However, both Kenna ('896) and Treace teach that is was know to use flanges on similar anchors that are outside at least one hole to anchor similar grafts; see Figure 3 of Treace and see Figures 3 and 8 of Kenna ('896). Therefore, it is the Examiner's position that it would have been obvious to put a flange on the Kenna ('104) anchors as additional means to secure them to the bone.

#### ***Allowable Subject Matter***

Claim 66 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 72-74 are objected to but would be allowable if rewritten to eliminate the objectionable language.

Claims 84-89 and 95 are allowed over the prior art of record.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 61-69, 71, and 75-83 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott Corrine can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 3738

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Paul Prebilic", with a stylized flourish at the end.

Paul Prebilic  
Primary Examiner  
Art Unit 3738